



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for Monetary Order for unpaid and/or loss of rent; damage to the rental unit; and authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation in the amount claimed against the tenant?
2. Are the landlords authorized to retain the security deposit?

Background and Evidence

The parties entered into a fixed term tenancy to commence December 1, 2012 and expire November 30, 2013. The tenant paid a security deposit of \$550.00 and was required to pay rent of \$1,100.00 on the 1st day of every month. The parties participated in a move-in inspection and the landlord prepared an inspection report.

On March 21, 2013 the tenant communicated to the landlord that she wished to end the tenancy. On March 24, 2013 the parties executed a document indicating the parties would end tenancy by mutual agreement on March 28, 2013 and the tenant would compensate the landlord the equivalent of two month's rent for such an agreement. The document indicates that the tenant would pay one-half of agreed upon compensation, or 1,100.00 by March 28, 2013 and the balance would be paid by April 30, 2013. The tenant also provided her forwarding address on the document signed March 24, 2013.

The tenant vacated the rental unit by the end of March 2013 and the parties participated in a move-out inspection on April 1, 2013. The landlord prepared a document on April

1, 2013 noting damage to drywall in the unit but the document failed to comply with several other requirements for move out inspection reports.

On April 5, 2013 the landlord sent a letter to the tenant informing her that “we are going to apply the amount of security deposit of \$550.00 to fix the damage. Your security deposit at the time of signing off the fixed term tenancy lease is accordingly forfeited.” The letter continues by requesting payment of the \$2,200.00 owed by the tenant for ending the tenancy.

The landlords filed their Application on April 18, 2013. The landlord requested compensation \$2,850.00. The landlord explained that this amount is comprised of the compensation of \$2,200.00 for the termination of the fixed term and the remainder is for drywall damage, or \$650.00, as estimated at the time of filing.

The landlord explained that a loss of rent was suffered for April 2013 and he rented the unit starting May 1, 2013 for much less than the amount the tenant was required to pay under her tenancy agreement. The tenant did not deny that she owed the landlords \$2,200.00 as agreed upon and explained that the reason she has not yet paid is due to her financial situation.

With respect to the drywall damage, the landlord provided photographs of the drywall damage which the tenant acknowledged happened during her tenancy. The landlord testified that he actually paid \$575.00 to have the drywall repaired after filing this Application for Dispute Resolution. I noted the landlord had not submitted a receipt or other verification of the amount he paid for repairs. Upon enquiry, the landlord stated he paid cash for the repair but that he was unable to provide the name of the person or company that made the repairs or provide the dates the repair were made. The landlord claimed he had a receipt but did not have it before him during the hearing.

The tenant was of the position the amount claimed by the landlord for drywall damage was high and questioned the veracity of his evidence especially considering the absence of a receipt and the landlord's inability to provide other specific information concerning the repair during the hearing.

Analysis

Upon consideration of everything presented to me, I accept that the parties reached a mutual agreement to end the fixed term tenancy on very short notice and that the parties agreed the landlords would receive compensation totalling \$2,200.00 for their agreement to end the tenancy. Given the very short notice and the release of other

liabilities associated with the early end of a fixed term tenancy, including loss of rent and costs to re-rent, I accept that the mutual agreement is not unconscionable. Therefore, I uphold the agreement reached by the parties on March 24, 2013 and I award the landlords \$2,200.00 as requested. I further award the \$50.00 filing fee the landlords paid for this application.

With respect to the landlords' claims for drywall damage I provide the following findings and reasons.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this case, it is undeniable that the tenant is responsible for damage to the drywall in the rental unit and failed to repair it, which is a violation of the Act. I am satisfied this violation caused a loss to the landlord. However, I find the weakness in the landlord's claim lies in the lack of verification of the value of the loss.

As the landlord failed to provide verification of the value of the loss and the tenant questioned the amount of claim I find it reasonable to approximate an award for repairs based upon the photographs rather than dismiss the claim entirely. I find a reasonable award for drywall damage to be \$300.00 and I award that amount to the landlords.

The landlords requested retention of the security deposit; however, I find the landlords violated the Act with respect to handling of the security deposit and the landlord must pay the tenant double the security deposit under the Act for the reasons provided below.

Section 38 of the Act provides that a landlord must have the tenant's written consent, or authorization from an Arbitrator to retain the security deposit. A tenant's right to the security deposit is extinguished if the tenant fails to participate in the move-in or move-out inspection. In the absence of extinguishment by the tenant or the tenant's written consent for deductions from the deposit, or the previous authorization of an Arbitrator,

the landlord is required to file an Application for Dispute Resolution seeking to retain deposit within 15 days of: the date the tenancy ended or the date the tenant provided a forwarding address in writing, whichever date is later. Where a landlord fails to comply with the Act with respect to handling of the security deposit, section 38(6) provides that the landlord must pay the tenant double the security deposit.

Upon review of the mutual agreement dated March 24, 2013 and the move out inspection report I find the tenant did not provide the landlord written authorization to retain her security deposit. Nor did the tenant "forfeit" her security deposit in signing the tenancy agreement as stated by the landlord in the letter he wrote to her on April 5, 2013. The tenant provided her forwarding address in writing on the mutual agreement dated March 24, 2013; however, the landlord indicated in his letter of April 5, 2013 that she had provided it during the move-out inspection that took place April 1, 2013. Whether the forwarding address was provide March 24, 2013 or April 1, 2013 the landlord failed to file a Application for Dispute Resolution seeking authority to retain the deposit until April 18, 2013 which is more than 15 days after the tenancy ended and the date the tenant provided her forwarding address.

In light of all of the above, I provide the landlord a Monetary Order calculated as follows:

Compensation for mutual agreement to end tenancy	\$ 2,200.00
Drywall damage	300.00
Filing fee	50.00
Less: double security deposit	(1,100.00)
Monetary Order	\$ 1,450.00

The Monetary Order must be served upon the tenant and it may be filed in Provincial Court to enforce as an Order of that court.

Conclusion

The landlords have been awarded compensation totalling \$2,550.00 which has been offset by double the security deposit. The landlords have been provided a Monetary Order in the net amount of \$1,450.00 to serve and enforce as necessary.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 12, 2013

Residential Tenancy Branch

